



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1996

Mr. Edwin M. Snyder
First Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR96-0062

Dear Mr. Snyder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37756.

The City of Plano (the "city") received a request for all information related to the requestor's "ongoing zoning battle" with the city. You have enclosed representative samples of the requested information,¹ and you contend that the information is excepted from disclosure by section 552.103 of the Government Code.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the city is or may be a party. The city has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the city must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a). Once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 551 (1990) at 4.

For compelling reasons of public policy, some information cannot be withheld from disclosure regardless of its relationship to litigation. Open Records Decision No.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

551 (1990). The "litigation exception" cannot be applied to except from disclosure the official records of the public proceedings of a government body. Open Records Decision No. 221 (1979).²

You state that the requestor owns property which is the subject of a suit, *City of Plano v. Levy et. al.*, pending in the Collin County Court at Law. You show that the requested information relates to this suit. However, the city cannot withhold the agendas and minutes of public hearings held by the city's planning and zoning commission or the enclosed copies of portions of the city charter. The city cannot withhold any information to which the opposing party has had access, for example, correspondence to and from the opposing party. If the opposing party in litigation has seen or had access to the requested information, there is no justification for withholding the information from the requestor. See Open Records Decision Nos. 349 (1982), 320 (1982). The remainder of the enclosed information is excepted from disclosure under section 552.103. We do not address your other arguments for disclosure, as none would serve to except from disclosure any information not already excepted under section 552.103.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37756

Enclosures: Submitted documents

²Information that a statute other than chapter 552 expressly makes public is not subject to the exceptions to required public disclosure. Open Records Decision No. 623 (1994) at 3. The minutes, tape recordings, and agenda of an open meeting are public records. Gov't Code §§ 551.022 (minutes and tape recordings), .041 (notice), .043 (time and accessibility of notice), .045 (emergency addition to agenda).

³With regard to your contention that the city cannot respond to a request that is "overly broad, unduly burdensome, vague and ambiguous," we note that the city must make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990). The city should also advise a requestor of the types of information available so that he may narrow his request. *Id.*

cc: Mr. Meyer Levy
4912 West Parker Road
Plano, Texas 75093
(w/o enclosures)